

MAR 31 2010

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

SHAUN ROE,

Defendant - Appellant.

No. 09-30038

D.C. No. 3:08-cr-00002-TMB

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Alaska
Timothy M. Burgess, District Judge, Presiding

Submitted March 16, 2010^{**}

Before: SCHROEDER, PREGERSON, and RAWLINSON, Circuit Judges.

Shaun Roe appeals from the 168-month sentence imposed following his guilty-plea conviction for conspiring to distribute and to possess with intent to distribute heroin, in violation of 21 U.S.C. §§ 846 and 841(b)(1)(A). We have

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

The Government contends that we lack jurisdiction over this appeal because Roe waived his right to appeal his conviction and sentence. This contention lacks merit. *See United States v. Jacobo Castillo*, 496 F.3d 947, 957 (9th Cir. 2007) (en banc) (enforceable appeal waiver does not deprive this court of jurisdiction).

Roe contends that although he waived his right to appeal in a written plea agreement, the waiver is not enforceable because the district court did not advise him at his change of plea hearing that his statements, under oath, could be used in subsequent perjury proceedings. This contention lacks merit because the government did not initiate a perjury action against Roe. *See Fed. R. Crim. P. 11(b)(1)(B); see also United States v. Vonn*, 294 F.3d 1093, 1094 (9th Cir. 2002)(order).

Thus, Roe's contention that the district court erred in imposing a four-level leadership enhancement pursuant to U.S.S.G. § 3B1.1(a) is precluded by the appeal waiver. *See United States v. Bibler*, 495 F.3d 621, 624 (9th Cir. 2007).

AFFIRMED.